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*NOT ADMITTED TO THE NEW YORK BAR

October 25, 2019

By ECF

The Honorable Edgardo Ramos
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Kraft Foods Group Brands LLC v. Bega Cheese Ltd., No. 1:17-cv-08104 (S.D.N.Y.)

Dear Judge Ramos:

We are writing on behalf of Petitioner Kraft Foods Group Brands LLC (“Kraft”) in response to this Court’s order dated October 10, 2019 (the “Order”), and in response to the October 24, 2019 letter to this Court from counsel for Respondent Bega Cheese Limited (“Bega”).¹

As the Court notes in the Order, Kraft commenced an arbitration in the International Centre for Dispute Resolution (the “ICDR”), which was enjoined pending a determination in the litigation between the parties in the Federal Court of Australia. On May 1, 2019, the Federal Court of Australia issued a decision in that proceeding. While we disagree with Bega’s description of that decision, there is no dispute that the decision is currently on appeal.

¹ For the Court’s convenience, we suggested submitting a joint status update on behalf of both parties, but Bega’s counsel refused to do so.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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Hon. Edgardo Ramos

The letter submitted by Bega's counsel fails to apprise the Court of the current status of the arbitration while the appeal is pending. Although Bega's counsel attaches a March 26, 2019 letter to the ICDR setting forth Bega's position as to why the arbitration should not be held in abeyance, Bega's counsel fails to note that Kraft responded to that letter by email to the ICDR dated April 1, 2019, a copy of which is attached hereto. That email—to which Bega's counsel never responded—sets forth the basis for holding the arbitration in abeyance. Following the receipt of Kraft's April 1 email, the ICDR has continued to hold the arbitration in abeyance pending resolution of the proceedings in Australia.

The fact that the ICDR continues to hold the arbitration in abeyance directly undermines Bega's position that the petition in this Court should be dismissed with prejudice. Once the appellate court in Australia decides the pending appeal, the parties will be in a position to review the appellate court's decision and determine what (if any) issues remain to be arbitrated. Contrary to Bega's assertions, there may be contractual matters requiring arbitration following resolution of the litigation proceedings in Australia. And Bega's continued resistance to such arbitration, notwithstanding the clear and unambiguous arbitration clause in the relevant contract, demonstrates the need to hold Kraft's Petition to Compel Arbitration in abeyance until after the appeal in Australia is resolved.

Respectfully submitted,



Darren W. Johnson

cc: Fran M. Jacobs, Esq. (via ECF)
Lewis R. Clayton, Esq. (via ECF)

Johnson, Darren W

From: Johnson, Darren W
Sent: Monday, April 1, 2019 12:54 PM
To: Jacobs, Fran M.; JohnsJ@adr.org
Cc: Clayton, Lewis R; Yang, Cindy; Gross, Amy C.
Subject: RE: Kraft Foods Group Brands, LLC v. Bega Cheese Limited - Case 01-18-0000-7749

Dear Mr. Johns,

I am writing on behalf of Claimant Kraft Foods Group Brands LLC ("Kraft") in response to Ms. Jacobs' March 26 letter, which purports "to bring to your attention some additional facts that [Kraft] failed to mention," and suggests that "[b]ased on these additional facts," you should "treat [this] arbitration as closed." We respectfully disagree.

As an initial matter, none of the purported "additional facts" set out in Ms. Jacobs' letter is new. The parties previously disclosed that Kraft is restrained from taking any step in this matter pending the determination of the proceeding currently pending in the Federal Court of Australia. Ms. Jacobs' July 2, 2018 letter previously stated her client's position that Kraft had amended its pleadings in the Federal Court of Australia to include claims similar to those filed with the ICDR. And the parties previously noted that trial in the Federal Court of Australia was scheduled to commence in August 2018, and that the parties are still awaiting a decision from the Federal Court of Australia.

More importantly, none of these previously disclosed facts provides any basis for the ICDR to treat this matter as closed, especially considering that Kraft, the Claimant that filed the proceeding, has specifically requested that it be held in abeyance pending a decision from the Federal Court of Australia. Once that decision has been issued, the parties will be in a position to review it and determine what (if any) issues remain to be resolved in this proceeding.

Respectfully submitted,

Darren Johnson

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